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IN THE

Supreme Court of the United States

October Term, 1964

No. **210**

JAMES T. STEVENS,

Petitioner,

against

Honorable **CHARLES A. MARKS**, Justice of the
Supreme Court of New York, County of New York,
Respondent.

**RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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Statement

This is a petition for writ of certiorari to the New York Supreme Court, Appellate Division, First Department, to review a decision of that court, rendered October 30, 1964, unanimously affirming, with an opinion, the order of mandate dated July 30, 1964, adjudging petitioner to be guilty of contempt of court. Leave to appeal to the New York Court of Appeals was denied on February 4, 1965 by Chief Judge Charles S. Desmond.

Introduction

On June 26, 1964, the petitioner, a lieutenant in the New York City Police Department, executed a limited waiver of immunity. Thereafter, he refused to give testimony before a grand jury pursuant to that waiver, and was, consequently, held in contempt of court despite his plea that the waiver was constitutionally defective.

Circuit Judge Irving R. Kaufman in an opinion affirming the District Court's dismissal of petitioner's writ of habeas corpus describes in detail both the events leading up to the citation for contempt, as well as the later fruitless attempts by petitioner in both federal and state court to have that conviction set aside.

That part of the opinion adverting to the facts of the case is to be found at pages 35 through 39 of the printed petition.

Question Presented

Is the alleged invalidity of a waiver of immunity against prosecution signed by a witness, a legal defense to a criminal contempt prosecution for refusal to testify before a grand jury?

POINT I

The order adjudging petitioner to be in contempt of court deprived him of no constitutionally protected right [answering petitioner's brief].

Petitioner claims that a waiver of immunity executed by him is invalid because he was coerced into signing it by the threat of loss of his job if he refused to so sign, and further that it had been obtained from him without his being advised that he was entitled to consult with counsel prior to its execution. Thus, petitioner asserts, since the waiver was invalid he had every right to interpose his Fifth Amendment privilege and to remain silent in the face of the official inquiry, and his conviction for contempt of court for so doing was unconstitutional.

However, a 1955 decision of this Court, *Regan v. New York*, 349 U. S. 58, held that the purported invalidity of a waiver of immunity (whatever the reason ascribed for its being defective) is no defense to a criminal contempt prosecution for refusal to testify before a grand jury. But, the case went on to hold, the waiver's invalidity (if it is indeed invalid) is a complete defense to any subsequent prosecution which might arise as a result of disclosures made by the witness concerning any crimes committed by him. Hence, the correct procedure is that a witness, situated as is Stevens, should make the appropriate objection and then testify as directed. Should he thereafter be indicted as a result of his testimony he can at that time interpose his objection on constitutional grounds. There is, of course, a statute in New York which provides that testi-

mony relating to bribery cannot be withheld on the ground of self-incrimination, but which automatically confers immunity from prosecution for any criminal activity revealed in such testimony [New York Penal Law §§381, 2447].

This principle, and the ramifications flowing therefrom, have been thoroughly explored by the following Courts: the Appellate Division, First Department of the New York Supreme Court; Judge Weinfeld in a District Court opinion; and Circuit Judge Kaufman writing for the United States Court of Appeals, 2nd Circuit.

As there is little that can be added to these three opinions, which exhaustively treat both the federal and state aspects of the case, we respectfully adopt the reasoning and conclusions of those opinions, which are contained in the petition for certiorari at pages 25-44, and which, it is submitted, persuasively argue for the conclusion herein urged.

Conclusion

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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June, 1965